

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators 1 (MC2010-34)
China Post Group

Docket No. CP2017-131

ORDER APPROVING ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued March 22, 2017)

I. INTRODUCTION

The Postal Service seeks to include an additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (China Post Group) (Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, and Application for Non-Public Treatment of Materials, March 13, 2017 (Notice). The negotiated service agreement is attached to the Notice as Attachment 4 (Agreement).

II. BACKGROUND

Agreements included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product offer negotiated prices for delivery in the United States of items entered by foreign postal operators such as Inbound Parcel Post, Inbound Direct Entry, and Inbound Express Mail Service (EMS), as well as certain ancillary services used in conjunction with such services.

On March 13, 2017, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. See Notice at 3-4. The Notice concerns only the portion of the Agreement that covers inbound competitive services, which includes inbound air parcels and Inbound EMS. *Id.* at 4. This Agreement replaces the inbound portion of the bilateral agreement between the Postal Service and China Post Group that the Commission approved in Order No. 2708 and expires on March 31, 2017.²

In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and requests that the Agreement be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, the instant Agreement, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 1.

² *Id.* at 4. Docket No. CP2015-136, Order Approving Additional Foreign Postal Operators 1 Negotiated Service Agreement, September 15, 2015 (Order No. 2708); Docket No. R2015-6, *et al.*, Order No. 3618, Order Approving Modification to Existing Agreement, November 16, 2016, at 2.

The Agreement is intended to take effect April 1, 2017. Notice at 4; *id.* Attachment 4 at 7. It is set to expire June 30, 2018. *Id.*

On March 14, 2017, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

III. COMMENTS

The Public Representative filed comments on March 17, 2017.⁴ No other comments were received. Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the Agreement is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. PR Comments at 2-3. She states that the Agreement shares similar cost and market characteristics with the baseline agreement. *Id.* at 3. She also concludes that the negotiated inbound rates offered in the Agreement are likely to generate sufficient revenue to cover attributable costs and, therefore, will not degrade the cost coverage of the product. *Id.* She states that the addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Operators 1 product should allow the product to comply with the requirements of 39 U.S.C. § 3633(a). *See id.* at 3-4.

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and

³ See Docket No. CP2016-223, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 14, 2017.

⁴ Public Representative Comments, March 17, 2017 (PR Comments).

satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. In Order No. 546, the Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁵

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. It asserts that the Agreement fits within the draft Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 4. The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms but states that prices may differ. *Id.* at 7. The Postal Service identifies numerous differences between the Agreement and the baseline agreement but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁶

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors'

⁵ Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010, at 9 (Order No. 546). The agreement was the Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). Order No. 546 at 1-2. See *also* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010.

⁶ *Id.* at 5, 7. Differences include, among others, revisions to existing articles, the inclusion of new articles, replacement of Attachment 1 with Annex 1, and addition of Annexes 2-11. *Id.* at 5-7.

Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments.

The Commission concludes that the Agreement is functionally equivalent to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission, therefore, finds that the Agreement may be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. The addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should not cause cost coverage for the product to fall below 100 percent because, as the Commission found in the FY 2015 Annual Compliance Determination Report (ACD), the product as a whole covers its attributable costs.⁷ Consequently, the Commission finds that the addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to continue to comply with 39

⁷ Docket No. ACR2015, Annual Compliance Determination Report, March 28, 2016, at 78, 88-89.

U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C.

§ 3633(a)(1). Similarly, it finds the addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs during future ACDs to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The intended effective date of the Agreement is April 1, 2017. Notice at 4; *id.* Attachment 4 at 7. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement. The contract is set to expire June 30, 2018, unless terminated earlier in accordance with Article 23 of the Agreement. *Id.* If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2017-131 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revisions to the Mail Classification Schedule appear below the signature of this Order and are effective April 1, 2017.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement.
3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2500 Negotiated Service Agreements

2515 Inbound International

2515.10 Inbound Competitive Multi-Service Agreement with Foreign Postal Operators

2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

Included Agreements

China Post Group, ~~CP2015-136~~CP2017-131, expires ~~March 31, 2017~~June 30, 2018
